

February 27, 2006

Rod Nilsestuen, Secretary  
Department of Agriculture, Trade and Consumer Protection  
PO Box 8911  
Madison, WI 53708-8911

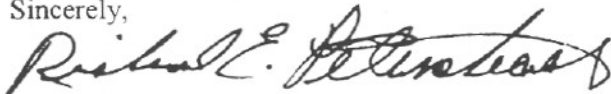
Dear Secretary Nilsestuen:

On February 23, 2006, the Small Business Regulatory Review Board (SBRRB) heard testimony from Mike Turner, Executive Director of Wisconsin Fertilizer and Chemical Association on a proposed Department of Agriculture, Trade and Consumer Protection (DATCP) rule relating to Fertilizer and Pesticide Bulk Storage, DATCP 33. The SBRRB's statutory authority for rule review is contained in 227.14(2g). As part of the testimony, the association asked the SBRRB to determine whether the small business impact analysis prepared for the rule complied with Wis. Stats., 277.14(2m). This statute requires the use of accurate data when completing a small business impact analysis of a proposed rule.

The business impact analysis for this rule estimated that 10 to 15 percent of the businesses affected would meet the definition of small business. However, following a contact from Carol Dunn, the Department of Commerce Small Business Ombudsman, DATCP subsequently determined this estimation was based on information collected several years ago. DATCP's new research determined that 55 percent of the businesses affected met the definition of small business. The Board finds this miscalculation problematic to the extent that an accurate reflection of the number of small businesses impacted by this rule was not disclosed in the Notice of Hearing as statutorily required. Further, the inaccurate estimate formed the basis for conclusions which DATCP made in its small business impact analysis. An accurate, fact-based analysis of the economic impact of a proposed administrative rule is a key to responsible state rulemaking.

The SBRRB requests that DATCP rework the small business impact analysis for this rule, and include in the analysis information from which the basis for the estimates used in the analysis can be determined. The SBRRB suggests that DATCP work closely with the affected industries, such as the Wisconsin Fertilizer and Chemical Association when drafting the final version of this rule. The SBRRB believes that DATCP can obtain useful industry information by continuing the dialogue with the affected industries about the economic impact of this rule. The SBRRB also recommends that the Department consider reasonable alternatives to the rule to reduce the burden on small business.

Sincerely,



Richard Petershack, Chairman  
Small Business Regulatory Review Board

Cc: Ron Sklansky, Joint Legislative Council  
Mike Turner, Executive Director, Wisconsin Fertilizer and Chemical Association  
Marty Henert, Executive Assistant, DATCP

*Small Business Regulatory Review Board*  
*"Giving a Voice to Small Business in Wisconsin"*